

**Introduced by Senator Blakeslee**

February 15, 2011

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An act to amend Section 11353 of, and to add Section 11346.35 to, the Government Code, relating to regulations.

**LEGISLATIVE COUNSEL'S DIGEST**

SB 353, as introduced, Blakeslee. Regulations: economic analysis.

Existing law, the Administrative Procedure Act, governs the procedure for the adoption, amendment, or repeal of regulations by state agencies and for the review of those regulatory actions by the Office of Administrative Law. Existing law requires a state agency proposing to adopt, amend, or repeal any administrative regulation to assess the potential for adverse economic impact on California business enterprises and individuals, as prescribed.

Existing law exempts the adoption or revision of state policies for water quality control and water quality control plans and guidelines by the State Water Resources Control Board from the procedures of the act, except as provided.

The bill would require an agency to enter into an agreement for the performance of an external economic peer review, as specified, of an agency's economic assessment for any major rule, as defined. The bill would prohibit an agency from taking any action to adopt the final version of a major rule unless certain conditions relating to the external economic peer review are met.

This bill would require the State Water Resources Control Board to comply with the economic assessment requirement and the corresponding external economic peer review requirement of the act for any policy, plan, or guideline adopted by the board.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 11346.35 is added to the Government  
2     Code, to read:  
3     11346.35. (a) For purposes of this section, the following terms  
4     have the following meanings:  
5     (1) “Economic assessment” refers to the assessment required  
6     by Section 11346.3.  
7     (2) “Major rule” means the adoption, amendment, or repeal of  
8     any regulation by a state agency, including a policy adopted by  
9     the State Water Resources Control Board pursuant to the  
10    Porter-Cologne Water Quality Control Act (Division 7  
11    (commencing with Section 13000) of the Water Code) that has the  
12    effect of a regulation, and that is adopted in order to implement,  
13    interpret, or make specific a statute, that will have an economic  
14    impact on the state’s business enterprises in an amount exceeding  
15    one hundred million dollars (\$100,000,000), as estimated in the  
16    economic assessment.  
17    (b) An agency shall enter into an agreement with the National  
18    Bureau of Economic Research, the University of California, the  
19    California State University, or groups of economists of comparable  
20    stature and qualifications that are recommended by the President  
21    of the University of California, to conduct an external economic  
22    peer review of the economic assessment for any major rule  
23    proposed for adoption by an agency.  
24    (c) (1) An agency shall use the process for selecting external  
25    peer reviewers adopted pursuant to Section 57004 of the Health  
26    and Safety Code, except as provided in paragraph (2).  
27    (2) An agency may contact or communicate with an external  
28    economic peer reviewer for the purpose of entering into a contract  
29    with the reviewer and providing the proposed major rule, including  
30    the economic assessment, and other appropriate materials on which  
31    the economic assessment of the proposed major rule are based.  
32    (d) A person shall not serve as an external economic peer  
33    reviewer for the economic assessment of a major rule if that person  
34    participated in the development of the economic assessment of the  
35    major rule.

1 (e) The identity of the individual external economic peer  
2 reviewers shall remain confidential until the external economic  
3 peer reviewer submits the written report to the state board.

4 (f) An agency shall not take any action to adopt the final version  
5 of a major rule unless all of the following conditions are met:

6 (1) The agency submits the economic assessment of the  
7 proposed major rule, along with a statement of the findings,  
8 conclusions, and assumptions on which the economic assessment  
9 of the proposed rule are based and the supporting data, studies,  
10 and other appropriate materials, to the external economic peer  
11 review entity for its evaluation.

12 (2) The external economic peer review entity, within the  
13 timeframe agreed upon by the agency and the external economic  
14 peer review entity, prepares a written report that contains an  
15 evaluation of the economic assessment of the proposed rule. If the  
16 external economic peer review entity finds that the agency has  
17 failed to demonstrate that the economic assessment of the proposed  
18 rule is based upon sound economic knowledge, methods, and  
19 practices, the report shall state that finding, and the reasons  
20 explaining the finding, within the agreed-upon timeframe, but no  
21 later than 60 days following the external economic peer review  
22 entity's receipt of the materials listed in paragraph (1).

23 (3) The agency accepts the finding of the external economic  
24 peer review entity, in whole, or in part, and revises the economic  
25 assessment of the proposed rule accordingly, or rejects the finding.  
26 If the agency disagrees with any aspect of the finding of the  
27 external economic peer review entity, it shall explain, and include  
28 as part of the rulemaking record, its basis for arriving at such a  
29 determination in the adoption of the final rule, including the reasons  
30 why it has determined that the scientific portions of the proposed  
31 rule are based on sound scientific knowledge, methods, and  
32 practices. The external economic peer review entity's written  
33 findings will also be included in the rulemaking record.

34 (g) The agency shall notify the fiscal committees of each house  
35 of the Legislature and the Department of Finance of the completion  
36 of the external economic peer review. The notification shall include  
37 the text of the proposed major rule, the agency's economic  
38 assessment of the major rule, and the external economic peer  
39 review entity's written findings.

1 (h) The requirements of this section do not apply to any  
2 emergency regulation adopted pursuant to Section 11346.1.

3 (i) Nothing in this section shall be interpreted to, in any way,  
4 limit the authority of an agency to adopt a rule pursuant to the  
5 requirements of the statute that authorizes or requires the adoption  
6 of the major rule.

7 SEC. 2. Section 11353 of the Government Code is amended  
8 to read:

9 11353. (a) Except as provided in subdivision (b) *and* (c), this  
10 chapter does not apply to the adoption or revision of state policy  
11 for water quality control and the adoption or revision of water  
12 quality control plans and guidelines pursuant to Division 7  
13 (commencing with Section 13000) of the Water Code.

14 (b) (1) Any policy, plan, or guideline, or any revision thereof,  
15 that the State Water Resources Control Board has adopted or that  
16 a court determines is subject to this part, after June 1, 1992, shall  
17 be submitted to the office.

18 (2) The State Water Resources Control Board shall include in  
19 its submittal to the office all of the following:

20 (A) A clear and concise summary of any regulatory provisions  
21 adopted or approved as part of that action, for publication in the  
22 California Code of Regulations.

23 (B) The administrative record for the proceeding. Proposed  
24 additions to a policy, plan, or guideline shall be indicated by  
25 underlined text and proposed deletions shall be indicated by  
26 strike-through text in documents submitted as part of the  
27 administrative record for the proceeding.

28 (C) A summary of the necessity for the regulatory provision.

29 (D) A certification by the chief legal officer of the State Water  
30 Resources Control Board that the action was taken in compliance  
31 with all applicable procedural requirements of Division 7  
32 (commencing with Section 13000) of the Water Code.

33 (E) *The results of the economic impact assessment and the*  
34 *external economic peer review of the assessment, if any, as*  
35 *required by Sections 11346.3 and 11346.35*

36 (3) Paragraph (2) does not limit the authority of the office to  
37 review any regulatory provision which is part of the policy, plan,  
38 or guideline submitted by the State Water Resources Control Board.

39 (4) The office shall review the regulatory provisions to  
40 determine compliance with the standards of necessity, authority,

1 clarity, consistency, reference, and nonduplication set forth in  
2 subdivision (a) of Section 11349.1. The office shall also review  
3 the responses to public comments prepared by the State Water  
4 Resources Control Board or the appropriate regional water quality  
5 control board to determine compliance with the public participation  
6 requirements of the Federal Water Pollution Control Act (33 U.S.C.  
7 Sec. 1251 et seq.). *The office shall review the regulatory provisions*  
8 *for compliance with the economic impact assessment required by*  
9 *Section 11346.3 and the external economic peer review analysis,*  
10 *if any, required by Section 11346.35.* The office shall restrict its  
11 review to the regulatory provisions and the administrative record  
12 of the proceeding. Sections 11349.3, 11349.4, 11349.5, and  
13 11350.3 shall apply to the review by the office to the extent that  
14 those sections are consistent with this section.

15 (5) The policy, plan, guideline, or revision shall not become  
16 effective unless and until the regulatory provisions are approved  
17 by the office in accordance with subdivision (a) of Section 11349.3.

18 (6) Upon approval of the regulatory provisions, the office shall  
19 transmit to the Secretary of State for filing the clear and concise  
20 summary of the regulatory provisions submitted by the State Water  
21 Resources Control Board.

22 (7) Any proceedings before the State Water Resources Control  
23 Board or a California regional water quality control board to take  
24 any action subject to this subdivision shall be conducted in  
25 accordance with the procedural requirements of Division 7  
26 (commencing with Section 13000) of the Water Code, together  
27 with any applicable requirements of the Federal Water Pollution  
28 Control Act (33 U.S.C. Sec. 1251 et seq.), and the requirements  
29 of this chapter, other than the requirement for review by the office  
30 ~~in accordance with this subdivision~~ *requirements of this section,*  
31 shall not apply.

32 (8) This subdivision shall not provide a basis for review by the  
33 office under this subdivision or Article 6 (commencing with  
34 Section 11349) of any such policy, plan, or guideline adopted or  
35 revised prior to June 1, 1992.

36 (c) *The State Water Resources Control Board shall perform the*  
37 *economic impact assessment required by Section 11346.3 for any*  
38 *policy, plan, or guideline, or any revision thereof, that it adopts*  
39 *after January 1, 2012.*

40 (e)

1     (d) Subdivision (a) does not apply to a provision of any policy,  
2     plan, guideline, or revision, as applied to any person who, as of  
3     June 1, 1992, was a party to a civil action challenging that provision  
4     on the grounds that it has not been adopted as a regulation pursuant  
5     to this chapter.

6     ~~(d)~~

7     (e) Copies of the policies, plans, and guidelines to which  
8     subdivision (a) applies shall be maintained at central locations for  
9     inspection by the public. The State Water Resources Control Board  
10    shall maintain, at its headquarters in Sacramento, a current copy  
11    of each policy, plan, or guideline in effect. Each regional water  
12    quality control board shall maintain at its headquarters a current  
13    copy of each policy, plan, or guideline in effect in its respective  
14    region. Any revision of a policy, plan, or guideline shall be made  
15    available for inspection by the public within 30 days of its effective  
16    date.

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